

REMARKS

Reconsideration of the application is requested in view of the amendment to the claims and the remarks presented herein.

The claims in the application are claims 9 to 11, all other claims having been cancelled, drawn to the preferred extract.

Claims 2, 3 and 9 to 11 have been rejected under 35 USC 103 as being obvious over the Schwabe patent or as being obvious over Schwabe taken in view of Stankov. The Examiner states that Schwabe teaches Ginkgo bibloba extracts of 20 to 30% by weight of glycosides, 2.5 to 4.5% by weight of ginkgolides A, B, C and J, 2.0 to 4.0% by weight of bilobalide, less than 10 ppm of alkylphenol compounds and less than 10% by weight of proanthocyanidins. The Examiner concedes that Schwabe does not teach promoting muscle mass to the detriment of fatty mass in warm-blooded animals but deems the same compositions are administered to the same patients and therefor the same result must be obtained. Stankov is cited to show using Ginkgo bibloba extracts for weight control diets.

Applicant vigorously traverses these grounds of rejection since the cited art in no way relates to Applicant's desired method of promoting muscle mass to the detriment of fatty mass and it was not known before Applicant's invention. Applicants will concede that Schwabe uses the same composition as Applicant's but not for Applicant's purpose so the same patients are not being treated. Schwabe teaches using the Ginkgo extract for increasing circulation of blood,

prevention of ischemic disorders and inhibition of platelet aggregation (lines 1 and 2 of column 5). There is no teaching that patients being treated for circulating disorders would be in need of gain in muscular mass to the detriment of fatty mass and therefore, the patients are not the same. There is certainly no hint of using Ginkgo extracts to facilitate muscular mass to the detriment of fatty mass of patients to gain or to lose weight.

Stankov describes a composition to treat the “overweight” and the obese (see [001]). This composition contains among others and extract of Crataegus standardized, or not, in flavonoides, associated with an extract of Ginkgo biloba standardized, or not, in flavoneglycosides (page 2, line 58 and page 3, lines 1). According to Stankov, it is necessary to combine flavonoides resulting from extract of Crataegus, with the flavoneglycosides resulting from an extract of Ginkgo biloba to obtain a synergy (see [0011]). Flavonoides not combines in the extract Ginkgo biloba does not allow one to obtain the expected result in the used dosage [0012]. This synergy allows to treat the “overweight” and the obesity [001]. Stankov indicates that flavonoides not combined with the extract of Ginkgo biloba does not allow to obtain the expected result in the used dosage [0012]. Stankov would lead one person skilled the art away from the solution of its problem because he teaches that an extract of Ginkgo biloba alone (without any combination) has no effect if it is not combined with an extract of Crataegus.

Stankov does not describe the use of an extract of Ginkgo biloba in particular to prepare a medicine intended to facilitate the muscular mass to the detriment of the fatty mass of patients trying to gain or to lose weight subjected to a regime and/or to another medical treatment. Stankov does not describe the surprising effect with an extract Ginkgo biloba which allows to

facilitate the muscular mass to the detriment of the fatty mass. Moreover, Stankov discloses the use of an extract of Ginkgo biloba in combination with an extract of Crataegus to obtain a synergy. The use of an extract of Ginkgo biloba without combination with an extract of Crataegus is not described. Therefore, the cited art in no way relates to Applicant's claimed method and withdrawal of this ground of rejection is requested.

Claims 2, 3 and 9 to 11 are rejected under 35 USC 102 as being anticipated by O'Reilly et al which the Examiner states he teaches the claimed Ginkgo extract being administered to the same patients and therefore the same result must be obtained.

Applicants again traverse the rejection since O'Reilly does not treat the same patients to obtain Applicant's result. O'Reilly describes extracts of Ginkgo biloba, standardized or not in flavoneglycosides and does not describe the surprising effect described according to Applicants' invention to know the intensification of the muscular mass to the detriment of the fatty mass by patients trying to gain or to lose the weight subjected to a regime and/or to another medical treatment. O'Reilly does not describe the use of an extract of Ginkgo biloba in particular to prepare a medicine intended to facilitate the muscular mass to the detriment of the fatty mass of patients trying to gain or to lose the weight subjected to a regime and/or another medical treatment.

The mechanism of biological action of Applicant's extract on the promotion of muscle mass is not known. On the other hand, the technical result which is to facilitate the muscular mass to the detriment of the fatty mass was well demonstrated in the example in page 6 to 7 of